C.F. 71 (a)—6,006—26-1-43.

1943. 107

Department of Revenue

OFFICE Board of Revenue

STATION Madras

Mis No. 1564 T 10

B 2286/43

Dated 10-11-43

Pages in the file

SUBJECT.

Suit - Original (S Kanara) - Mangalore 4th Munsif Court - OS No. 232/42 - Encht - Land - Mangalore Taluk and Town - Attavar village - T.S No. 207 - Road Poramboke Claim of private ownership - Vs Fernandiz and another Compromise Decree - Further action thereon

C.F. 71 (a)

Back Papers.

Dis.	No.	Department / Series.	Date.	Dis.	No.	Department	Date.

Wi 606
18-6-43

Further Papers.

Single Member.

~~Two Members.~~

~~Full Board.~~

A.	D.D.S. and L.R.	Assistant Secretary.				J.S.	Secretary.	M	M	M	M
		L.R.	Irrigation.	Commercial Tax.	Court of Wards.			4	3	2	1

1. ~~Open file seen by~~

2. ~~Final draft~~ seen by

3. ~~Now~~ circulated to

4. Initials

Passed for record.

Secretary
Joint Secretary.

9-12-43

A.S. (L.R.) 9.12.43

A.S. (Irrigation)

A.S. (Commercial T

A.S. (Court of Ward

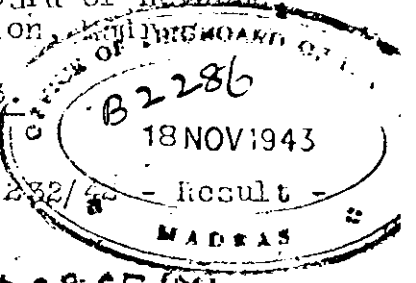
D.D.S. and L.R.

NOTE.—Entries not required to be scored out.

From
M. Karamatullah Esq., I.C.S.,
Collector of South Kanara.

To
The Secry. to the Board of Revenue,
Land Rev. & Irrigation, Madras.

Ref.No.A-3/8442-43 dated 13-11-1943.



Sir,

SUITS - Mangalore Dt.Munsiff's Court - O.S.No.232/42 - Result - Reported.

Reference: B.P.Mis.No.606, dated 13-11-1943. 18-6-43. p 28 CF (M)

I invite the Board's attention to its proceedings cited above. The suit referred to therein has since been dismissed without costs. A copy of the decree is enclosed. p 11 CF

2. The suit was settled out of court between the Plaintiffs and the Mangalore Municipal Council. The circumstances and the conditions under which the suit was settled have been explained in the letters S.No.7/42, dated 23-9-1943 and Ref.No.A. 498/43 dated 5-10-1943, from the Commissioner of Mangalore Municipality and the Government Pleader, Mangalore respectively, copies of which are herein enclosed. Though the court costs have not been allowed in the decree as a matter of fact the costs including the pleader's fee have been paid by the plaintiffs out of court. No further action is therefore necessary in the matter. p 9 CF

As the circumstances of the case present a peculiar feature, I am reporting them for the information of the Board.

Malcampbell

or Collector.

5.XI.W3

REPORT.

Read all the papers of this case and also the opinion of the --- Legal Adviser of the Municipality Mr.P.D'Souza, B.A.,B.L.

The claim of the Municipality clearly appears to be barred by --- limitation. The terms proposed by the applicant are undoubtedly in the interests of the Municipality in as much as the party is prepared to give up not only the disputed plot but also some more land, which will broaden and straighten the road.

As to the naming of the road the Municipality can lose nothing by doing so. The Committee inspected the site and after carefully considering the matter recommends that the naming of the roads be as follows:-

As per eye-sketch attached (1) the road branching off from the Trades School and leading up to the junction in front of the Temple to be named as Pandeshwar Temple Road; (2) the road from the junction in front of the temple running by the side of the Travellers' Bungalow and leading to the Attavar Municipal Boys' school to be named as --- Travellers' Bungalow road; (3) the road leading towards south from the junction of the above Pandeshwar Temple road and the T.B.Road, to be named as Richard's Road.

Sd/ C.L.Lobo,
25-8-1943. VICE-CHAIRMAN, M.C.
/True copy/

Extract from the proceedings of the Mangalore Municipal Counc dated the 6th September 1943.

36. Council Resolution No.32 dated the 25th March 1943 referring to the Encroachment Committee petition from Messrs.U.B.Fernandez and R. A.Fernandez in the matter of the proposed compromise of the suit O.S. No:232/42 on the file of the Dt.Munsiff of Mangalore and the Committees report thereon.

The Committee's report is accepted.

XX XX XX

Sd/ H. Hussain Saheb,
Chairman, M.C.

True extract/

Extract from the proceedings of the Mangalore Municipal Council, dated the 20th September 1943.

XX XX XX

40. Read letter dated the 14th September 1943 from Messrs.U.B. Fernandez and R.A.Fernandez undertaking to erect an electric lamp on the Richard's road when materials are conveniently available from the deposit of Rs 250/- already made by them (with liability to meet any enhanced rate as necessary) to widen only that portion of Richard's road which abuts their compound and also to bear the cost of the --- Municipality and also of the Government in the suit which will be al-lowed by the Court.

Resolves that the offer of Messrs.U.B.Fernandez and R.A.Fernandez to erect an electric lamp of sufficient intensity in Richard's road and to accept the deposit of Rs 250/- for the purpose of an undertaking to contribute more to widen only that portion of the Richard's road which abuts their compound and to bear the costs of the Municipality in the suit be accepted.

XX XX XX XX

Sd/H. Hoosain Saheb,
Chairman, M.C.
/True Extract/

/True copy/

Narasimha Rao
for Collector.

Copy of letter - Suit No.7/1942 dated 23-9-1943 - from the Com-missioner, Mangalore Municipality, to the Collector of South Kanara.

Messrs. U.B.Fernandez and R.H.Fernandez against the --- Municipal Council - O.S.No.232 of 1942.

****

Messrs. U.B.Fernandez and R.A.Fernandez who have filed a suit --- against the Municipal Council against the removal of an encroachment, without prejudice to any of the contentions in the suit approached the Council with an offer to terminate the suit on its accepting the following conditions:-

1. To facilitate the intention of widening the strip of road near the Travellers' Bungalow, the Plaintiffs in the above suit propose to offer a strip of land as also the strip in dispute to the Municipality free of all cost.
2. That the widening of the road so far as it abuts on their property will be undertaken by them.
3. In consideration of the above the road is to be named as -- 'Richard's Road'

The Council referred this matter to a Committee and after mature consideration of the council in its resolution No.36, dated the 6th September 1942 accepted the recommendation of the committee and the --- following terms of compromise were arrived at.

1. To accept the gift of the plot marked APB in the plan attached to the plaint in addition to the plot marked B.P.C. the plot under dispute from the Plaintiffs.

2. The Plaintiffs undertake to widen that portion of the road abutting their compound.

3. The Plaintiffs to bear the costs of the Municipality and also of the Government in the suit in question that will be legally allowed by the Court in the suit.

4. The Plaintiffs who have already deposited Rs.250/- to bear the cost of erecting an electric lamp of sufficient intensity on the road in front of their house on the site to be approved by the Municipality after the war and in the event of the cost exceeding the amount deposited to bear such other additional cost of erecting the electric light and in consideration of all this the road branching off from the Trades School and leading up to the junction in front of the temple to be named as Pandeshwar Temple Road, the road from the junction in front of the temple running by the side of the Travellers' Bungalow and leading to the Attavar Municipal Boys' School to be named as 'Travellers' Bungalow road and the road leading towards South from the junction of the above Pandeshwar Temple Road and the Travellers' Bungalow road to be named as Richard's Road.

In view of the above resolution, I request you to kindly issue necessary instructions to the Government Pleader, in the matter

Sd/

23-9-1943. Commissioner.

/True copy/

For Collector.

16.XI.43

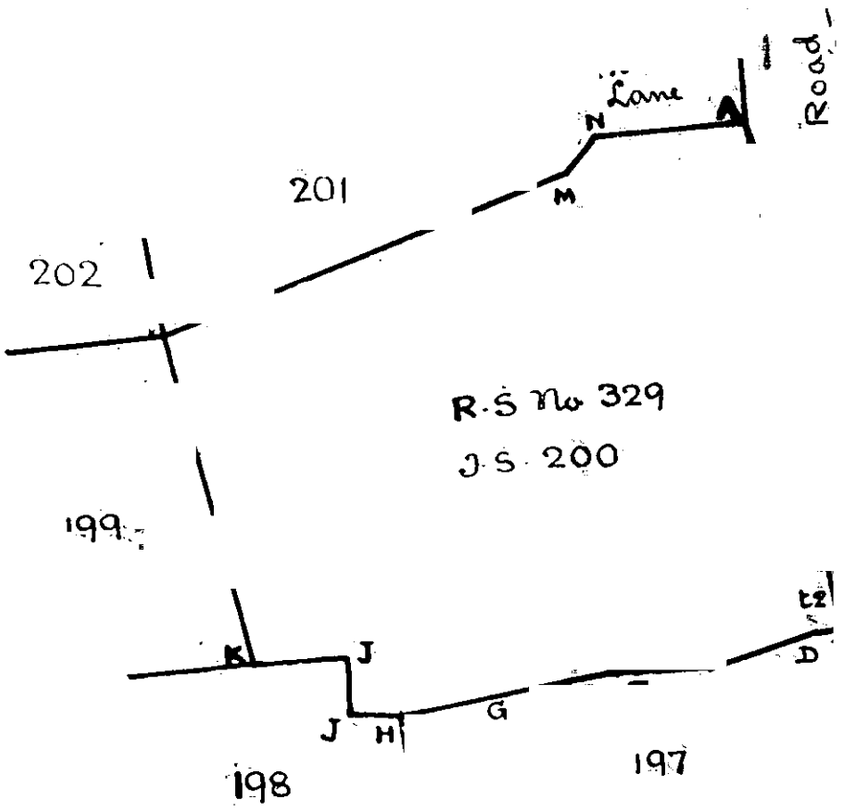
District - South Kanara

Taluk Mangalore

Village { No. 86
Name Attavar

Survey no. 329

J. S. No. 200



Copied by

. Copy of letter Ref.No.A.498-43 dated 5th October 1943 from the Government Pleader & Pub.Prosecutor, Mangalore, to the Collector of -- South Kanara.

Suits - Mangalore Pt.Munsiff's Court - O.S.No.232/42 - Disposal intimated.
Reference: Your Ref.No.A-3/9022-42 dated 29th October 1943.

****

I endorsed on the plaint "the suit may be dismissed without --- costs, the costs of Rs 54/- having been received by me on behalf of -- defendants 1 and 2". Of Rs 54/- Rs 50/- is for my fees and for Defen--dants 1 and 2, and Rs 4/- is the costs due to the Municipality. I am forwarding Rs 4/- to the Commissioner. I am applying also for two -- copies of the decree, one for each party.

/true copy/

Narasimha Rao

for Collector. 16.4

Head Clerk

IN THE COURT OF THE DISTRICT MUNSIFF OF MANGALORE.

Present:- Sri E. Krishnamurthi, M.A., B.L.

Thursday, the 30th day of September 1943.

ORIGINAL SUIT No. 232/42.

Between: 1. U.B.Fernandez.) Sons of H.C.Fernandez.)Plaintiffs.
2. R.A.Fernandez.))
Plaintiffs reside in Pandeshwar, Mangalore) Town.)

and

1 ...e Mangalore Municipality, Mangalore --) Town.
2. The Province of Madras, represented by -)Defendants.
...e Collector of South Kanara.

PTEF Suit for a declaration that the strip of land marked B.P.C. in the plaint plan of T.S.No.200 of XX Ward and of the area of about -- 372 Sq.feet and referred to in the notice of Defendant No.1 dated -- 4-9-1941 and order dated 16-6-1942 belongs to Plaintiffs on mulgeni right and that 1st Defendant has no manner of right, title and inte--rest in the said land and for a perpetual injunction restraining the 1st Defendant from entering on any portion of the said plot or taking or issuing or removing and interfering on any portion of the said plot and for costs of suit.

Value of claim:-

Declaration and injunction. ... Rs 150-0-0.

Cause of action arose on 4-9-1941, 8-6-1942 and 18-6-1942.

DECREE: This suit coming on this day for final hearing be--fore me, in the presence of Sri M.J.Mallya, pleader and M.A.Shastri, Advocate for Plaintiffs and of~~xxxxxx~~ Mr.P.D'Souza Pleader for the 1st Defendant and the Government Pleader for the 2nd Defendant, this Court doth order and decree, as per memo filed by -- the parties, that Plaintiffs' suit be and the same hereby is dismissed but without costs.

Given under my hand and the seal of the Court this 30th day of September 1943.

Sd/ E. ~~Krishna~~ Krishnamurthi,
District Munsiff.

/True copy/

For Collector. 10.11

Th. XI. 43

FWS

Draft for approval

Suit - Original - (S. Kanara) - Mangalore Dt.
Munsif's Court OS 232/43 - Encroachment of Land by Mangalore
Taluk cum Town - Kudroli village - I.S. No. 201 - Road Rs.
Claim of Private ownership - V. B. Fernandez and another
Compromise decree - Further action - Unnecessary - ~~Orders passed~~

pp 1-2 ca Read B - 2286/43

B. P Mis 1476/43 dt 30-11-

In the circumstances reported in the above agrees with the Collr ~~of S. Kanara~~ that no further action is necessary in the matter.

30.11.43

Post 1-11-43 30/11

30/11/43

To The Collr of S. Kanara.

Noti file

Suit Original (South Kanara) Mangalore 4th Munsif Court OS 232 [illegible]. Encroachement Mangalore Taluk and Town Attavar village T.S. No. 207 Road Pramboke Claim of private ownership V.B. Fernandiz and another Compromise decree

p1-2 CF — B. 2256/43. Dom. Mis Com. of S. Kanara A.8443/43 dy 13.11.

To AS (L.R.) SK p.15 CF (M) and 7 CF

The dispute in the above suit was sanctioned by the

p.28 CF (M) — Board in B.P. No. 606 dy 18.6.43 and the Com. in his letter cited

para 2 p1 CF — above reports that the suit was settled out of court between the plaintiffs and the Mangalore Municipal Council.

p1 NF (M) — The subject matter of the suit is that the plaintiffs encroached upon S.No. 207 Road poramboke vested in the Mcply and claimed ownership of the plot.

The terms of the settlement are set out in the Copy of the

p.3 CF — letter Suit No. 7/1942 dy 23-9-43 from the Commissioner, Mangalore

para 1 p1 CF — Mcply to the Com. According to these terms the party plaintiffs should give up

Heirs

[illegible] only the surplus portion also some more of the private land which ... please see at p 7c
will make the road broad and straight. No cost has been allowed in ... p 11 CF
the Court decree but the plaintiffs have paid the same out of Court. ... p 9 CF
Please see the opinion of the Vice Chairman Commissioner of the Municipality. He says that ... p 5 CF
the claim of the Municipality appears to be barred by limitation, and that the
terms proposed by the plaintiff Applicants are undoubtedly in the interests of
the Municipality and that by the naming of the road as requested for by
the plaintiffs the Municipality is to lose nothing.

The Govt have lost nothing by the settlement and the
Collr says that no further action is necessary in the matter. The Govt's para 2 p 5 CF
proposal may be approved. The Board may agree with him.

Tom 27/11 — 27/11/43

Joint Secy. — 27 NOV 1943

To MAS (L.R.)

Draft submitted for approval.

Tom 9-11-43 : 30/11

30/11/43

Three L. I W. F

27/11/43

ASLR

31 Please 29/